

## SENATE BILL NO. 123

INTRODUCED BY BLACK

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REQUIREMENTS GOVERNING SPECIAL FUEL PERMITHOLDERS AND SPECIAL FUEL USERS; REQUIRING THAT SPECIAL FUEL PERMITHOLDERS USE FUEL ON WHICH STATE TAX HAS BEEN PAID; REQUIRING THAT MATERIAL USED FOR CONSTRUCTION, RECONSTRUCTION, OR IMPROVEMENT IN CONNECTION WITH WORK PERFORMED UNDER A PUBLIC CONTRACT BE PRODUCED USING SPECIAL FUEL ON WHICH STATE FUEL TAX HAS BEEN PAID; EXEMPTING SPECIAL FUEL PERMITHOLDERS FROM CERTAIN RECORDKEEPING REQUIREMENTS; INCREASING THE CIVIL PENALTIES FOR USING DYED SPECIAL FUEL ON THE PUBLIC ROADS AND HIGHWAYS; ELIMINATING THE MISDEMEANOR PENALTY FOR USING DYED FUEL; AND AMENDING SECTIONS 15-70-302, 15-70-321, 15-70-323, 15-70-325, 15-70-330, 15-70-356, AND 15-70-372, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 15-70-302, MCA, is amended to read:

**"15-70-302. Special fuel user's permits required -- exceptions.** (1) (a) A special fuel user shall obtain a special fuel user's permit annually from the department; prior to the use of special fuel:

~~(i) for the operation of a motor vehicle or vehicles in this state in excess of 26,000 pounds gross vehicle weight or registered gross vehicle weight used in an interstate operation;~~

~~(ii)~~ (i) by a special fuel user awarded a contract or subcontract in accordance with 15-70-321; or

~~(iii)~~ (ii) in a vehicle permitted pursuant to an agreement adopted pursuant to 15-70-121.

(b) Except as provided in subsection (3), a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any motor carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

(2) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits must be issued at no cost to the user by the department, ~~scale house personnel,~~ motor carrier services enforcement officers and ~~gross vehicle weight patrol crews~~ motor carrier services patrol officers. The department may require a user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(3) A special fuel user need not display the original or reproduced copy of the special fuel user's permit, as required by subsection (1), if the special fuel user is registered and licensed pursuant to the International Fuel Tax Agreement, as authorized by 15-70-121, and the vehicle displays a license or decal issued pursuant to the agreement.

(4) A special fuel user who obtains a permit under subsection (1) may use only fuel on which state fuel tax has been paid."

**Section 2.** Section 15-70-321, MCA, is amended to read:

**"15-70-321. (Temporary) Tax on special fuel and volatile liquids.** (1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions; and

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) The tax imposed in subsection (1) is 27 3/4 cents per gallon.

(3) Material used for construction, reconstruction, or improvement in connection with work performed under a contract as provided in subsection (1)(b) must be produced using special fuel on which state fuel tax has been paid.

**15-70-321. (Effective on occurrence of contingency) Tax on special fuel and volatile liquids. (1)**

The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas and biodiesel, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas and biodiesel, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions;

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state; and

(d) for each gallon of biodiesel delivered into the fuel supply tank of a highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) (a) The tax imposed in subsections (1)(a) through (1)(c) is 27 3/4 cents per gallon.

(b) The tax imposed in subsection (1)(d) is 85% of the amount provided for in subsection (2)(a).

(3) Material used for construction, reconstruction, or improvement in connection with work performed under a contract as provided in subsection (1)(b) must be produced using special fuel on which state fuel tax has been paid. (Terminates June 30 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.)

**15-70-321. (Effective July 1 of fourth year following date of occurrence of contingency) Tax on special fuel and volatile liquids. (1)** The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor

1 power to operate motor vehicles upon the public roads and highways of this state;

2 (b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas, of less than 46  
3 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized  
4 equipment, and the internal combustion of any engines, including stationary engines, used in connection with  
5 any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any  
6 highway or street and their appurtenances awarded by any public agencies, including federal, state, county,  
7 municipal, or other political subdivisions; and

8 (c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway  
9 vehicle, regardless of weight, operating upon the public roads and highways of this state.

10 (2) The tax imposed in subsection (1) is 27 3/4 cents per gallon.

11 (3) Material used for construction, reconstruction, or improvement in connection with work performed  
12 under a contract as provided in subsection (1)(b) must be produced using special fuel on which state fuel tax  
13 has been paid."

14  
15 **Section 3.** Section 15-70-323, MCA, is amended to read:

16 **"15-70-323. Special fuel user's records.** (1) ~~Every~~ Except as provided in subsection (3), every special  
17 fuel user and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in  
18 this state shall keep records, receipts, and invoices and other pertinent papers that the department may require  
19 and shall produce them for the inspection of the department at any time during the business hours of the day.

20 (2) The records, receipts, invoices, and other pertinent papers must be kept for a period of at least 3  
21 years from the date on which the return to which they relate was required to have been made.

22 (3) A special fuel user who is required to obtain a permit under 15-70-302 is exempt from the provisions  
23 of this section if the user uses fuel on which state fuel tax has been paid and if the user does not request a motor  
24 fuel tax refund."

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26 **Section 4.** Section 15-70-325, MCA, is amended to read:

27 **"15-70-325. Returns.** (1) For the purpose of determining the amount of liability for special fuel tax, each  
28 special fuel user shall file with the department, on forms prescribed by the department, a quarterly tax return.

29 (2) ~~Upon annual application, the department shall waive the filing of a quarterly tax return of any special~~  
30 ~~fuel user who establishes that the user's annual tax liability is or will be \$200 or less.~~

1 ~~\_\_\_\_\_ (3) The user shall make an annual report and return to the department on forms prescribed by the~~  
2 ~~department, on or before January 31 of each year. If the department determines that a user filing annual returns~~  
3 ~~is delinquent in making reports and payments, it shall require the person to file quarterly returns. A return, annual~~  
4 ~~or quarterly,~~ must contain a declaration by the person making the return ~~to the effect that the statements~~  
5 contained in the return are true and are made under penalties of perjury. The declarations have the same force  
6 and effect as a verification. The return must show the information that the department may reasonably require  
7 for the proper administration and enforcement of this part.

8 ~~(4)~~(3) The special fuel user shall file the return on or before the last day of the next calendar month  
9 following the period to which it relates; ~~provided, however, that.~~ However, for good cause, the department may  
10 grant a taxpayer a reasonable extension of time for filing, but not to exceed 30 days."  
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12 **Section 5.** Section 15-70-330, MCA, is amended to read:

13 **"15-70-330. Special fuel penalties.** (1) In the case of a special fuel user who refuses or fails to file a  
14 return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed a penalty  
15 of \$25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the  
16 tax due for each calendar month or fraction of a month during which the refusal or failure continues. However,  
17 if any special fuel user establishes to the satisfaction of the department that the failure to file a return within the  
18 time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.

19 (2) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this  
20 part, interest at the rate of 1% a month or fraction of a month from the date on which the tax was due to the date  
21 of payment in full must be added to the amount due and unpaid.

22 (3) (a) A special fuel user may not use dyed special fuel to operate a motor vehicle upon the public  
23 roads and highways of this state unless ~~the fuel is subject to taxation under 15-70-321(1)(b) or~~ the use is  
24 permitted pursuant to rules adopted under subsection (3)(b). The purposeful or knowing use of dyed special fuel  
25 in a motor vehicle operating upon the public roads and highways of this state in violation of this subsection is  
26 subject to the civil penalty imposed under ~~15-70-372 for the first offense~~ 15-70-372(2). ~~A subsequent offense~~  
27 ~~is also a misdemeanor punishable as provided in 15-70-336.~~ Each use is a separate offense.

28 (b) The department shall adopt and enforce reasonable rules for the movement of off-highway vehicles  
29 traveling from one location to another on public highways, public roads, or streets when using dyed fuel or  
30 nontaxed fuel.

(4) The operator of the vehicle is liable for the tax imposed in 15-70-321. If the operator refuses or fails to pay the tax, in whole or in part, the seller of the special fuel is jointly and severally liable for the tax imposed under 15-70-321 and for the penalties described in this section if the seller knows or has reason to know that the fuel will be used for a taxable purpose."

**Section 6.** Section 15-70-356, MCA, is amended to read:

**"15-70-356. Refund or credit authorized.** (1) A person who purchases and uses any special fuel on which the Montana special fuel license tax has been paid for operating stationary special fuel engines used off the public highways and streets or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special fuel used if the person has records, as provided in 15-70-323, to prove nontaxable use. The refund may not exceed the tax paid or to be paid to the state.

(2) (a) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

(b) (i) A nonpublic school may use dyed special fuel in buses that are owned by the nonpublic school if the buses are used for the transportation of pupils solely for nonsectarian school-related purposes.

(ii) For the purposes of this subsection (2)(b), nonpublic schools are those schools that have been accredited pursuant to 20-7-102.

(3) A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(4) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of special fuel with a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are

1 delinquent for 90 days or more.

2 (5) A person who purchases and exports for sale, use, or consumption outside Montana any special  
3 fuel on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid  
4 unless the person is not licensed and is not paying the tax to the state where fuel is destined. Upon completion  
5 of the reports required under 15-70-351, the department shall authorize the credit or refund."

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7 **Section 7.** Section 15-70-372, MCA, is amended to read:

8 **"15-70-372. Civil penalty penalties.** ~~The~~ Except as provided in subsection (2), the department may,  
9 after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil  
10 penalty not to exceed \$100 for any violation of this part. The civil penalty may be in addition to the criminal  
11 penalties imposed under 15-70-330, 15-70-336, and 15-70-366.

12 (2) The department shall, after giving notice and holding a hearing, if requested, impose a civil penalty  
13 not to exceed \$1,000 for the first offense and \$5,000 for the second offense for using dyed special fuel in  
14 violation of the provisions of 15-70-330(3)."

15 - END -